

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

TAG IRA, LLC,

Plaintiff,

vs.

Case No. 2014-659-CB

RESIDENTIAL GROUP 231, LLC, PROPERTY
SOLUTIONS OF MICHIGAN, INC., ALLEN
BOIKE, and STEVEN E. LONDEAU, JR.,

Defendants.

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OPINION AND ORDER

Plaintiff has filed a motion for entry of judgment as to Defendants Steven E. Londeau Jr. (“Defendant Londeau”) and Property Solutions of Michigan, LLC (“Property Solutions”). Defendant Londeau and Property Solutions have each objected to the entry of the requested judgment. In addition, the merit of Defendant Allen Boike’s (“Defendant Boike”) remaining defense remains before the Court.

Facts and Procedural History

In early 2011, Defendant Boike, allegedly on behalf of Defendant PSOM, contacted Plaintiff’s agent attempting to solicit an investment in a pool of securities that Defendant PSOM was seeking to purchase. Plaintiff declined the offer but agreed to extend a short term loan of \$200,000.00 to enable the purchase.

On August 26, 2011, a promissory note was issued by Defendant Residential Group 231, LLC (“Defendant 231”) in favor of Plaintiff in the amount of \$200,000.00 (“First Note”). None of the other Defendants are named in the First Note. Defendant 231 ultimately defaulted on the terms of the First Note.

On February 21, 2012, Plaintiff sent a written notice of default to Defendant 231 and Defendant PSOM. On March 2, 2012, in order to stop collection efforts, a promissory note was executed between Defendant PSOM and Plaintiff, in which Defendants Boike and Londeau allegedly personally guaranteed the loan amount due and owing ("Second Note"). While two payments were made pursuant to the Second Note totaling \$106,000.00, PSOM ultimately defaulted on the terms of the Second Note.

On February 20, 2014, Plaintiff filed its complaint in this matter alleging claims for: breach of contract (Count I), breach of implied contract (Count II), quantum meruit (Count III), promissory estoppel (Count IV), fraud (Count V), and conversion (Count VI).

On August 21, 2014, Plaintiff filed its motion for partial summary disposition. Defendants PSOM and Boike have filed a joint response. Defendant Londeau has filed an individual response. In addition, Plaintiff has filed a reply in support of its motion.

On October 3, 2014, the Court entered its Opinion and Order granting, in part, and denying, in part, Plaintiff's motion. Specifically, the Court dismissed Plaintiff's account stated claim, granted the remainder of Plaintiff's motion with respect to Property Solutions and Defendant Londeau, and denied Plaintiff's motion as to Defendant Boike pending an evidentiary hearing on his defense related to his signature stamp.

On November 24, 2014, Plaintiff filed its instant motion for entry of judgment as to Defendant Londeau and Property Solutions. On December 1, 2014, the Court held a hearing in connection with the motion. At the hearing, Defendant Londeau and Property Solutions objected to Plaintiff's motion and requested an evidentiary hearing. The Court granted Defendants' request and set the matter for an evidentiary hearing on December 22, 2014. Additionally, the

Court advised the parties that the evidentiary hearing would also address the merits of Defendant Boike's defense.

On December 22, 2014, the Court held a hearing in connection with the instant motion. Due to Plaintiff's failure to provide detailed billing records prior to the hearing, the Court adjourned the portion of the evidentiary hearing related to Plaintiff's motion for entry of judgment. However, the parties proceeded with the issue of Defendant Boike's defense. At the conclusion of the hearing, the Court took that matter under advisement.

Arguments and Analysis

Plaintiff's initial motion for summary disposition of its breach of contract claim against Defendant Boike was denied pending an evidentiary hearing based on his contention that he did not personally execute the Second Note. Specifically, Defendant Boike maintains that his signature on the Second Note was made using a signature stamp, that he did not personally use the stamp on the Second Note, and did not authorize anyone else to use the stamp on the Second Note. At the evidentiary hearing, the Court took testimony and other evidence with respect to the validity of the defense. Specifically, five individuals testified at the hearing: Defendant Londeau, Defendant Boike, Anthony Grix, Plaintiff's Manager, Lois Maljak, Property Solutions former office manager, and Gayle Grix, Anthony Grix's wife.

Mr. Grix, Defendant Londeau and Defendant Boike all testified that the First Note was executed, but that the required payments were not made as required by the First Note. Further, all three of those witnesses, as well as Mrs. Grix, testified that they attended a meeting in February 2012 at which the terms of the Second Note were negotiated in order to address the default under the First Note. Mr. Grix, Defendant Londeau and Defendant Boike all testified that Defendant Londeau drafted the Second Note after the meeting, and that Defendant Londeau used

Defendant Boike's signature stamp on the Second Note. Accordingly, the remaining issues are what the terms of the Second Note were supposed to be, and whether Defendant Londeau had the authority to use Defendant Boike's signature stamp in connection with the Second Note.

Anthony Grix testified that he and the Defendants entered into several contracts since 2007 and that Defendant Boike routinely used his signature stamp in connection with contracts. Mr. Grix testified that he knew that the signature stamp was used, rather than a personal signature, due to the uniformity in the signatures, as well as the marking made by the stamp around the actual signature. With respect to the Second Note, Mr. Grix testified that Defendant Boike was at the meeting at which the terms of the Second Note, including the personal guaranties, were discussed. In addition, Defendant Boike was copied on the email sent by Defendant Londeau that the Second Note, including the signed guaranties, was delivered to Mr. Grix. Further, Mr. Grix testified that at no point did Defendant Boike object to his personal guaranty.

Defendant Londeau testified that he and Defendant Boike both attended the February meeting, and that the terms of the Second Note, including the guaranties, were discussed and agreed to at the meeting. Defendant Londeau also testified that following the meeting Defendant Boike authorized him to draft the Second Note, including the guaranties, and to use the stamp to sign his name. Defendant Londeau stated that Defendant Boike commonly authorized others, including himself, to use the stamp. Additionally, Defendant Londeau testified that Defendant Boike was given a copy of the Second Note, and that he did not object at any time to the terms of the note until after the terms were breached.

While Defendant Boike acknowledged that he was at the February meeting, and that he had authorized others to use his signature stamp in the past, Defendant Boike testified that he did

not authorize Defendant Londeau to use the stamp in connection with the Second Note. However, Defendant Boike also conceded that he did not remember if he agreed to personally guaranty the Second Note at the time he attended the meeting. Indeed, Defendant Boike's memory of the events surrounding the negotiation, preparation, and execution of the Second Note appeared to be unclear. However, Defendant Boike conceded that he was copied on the email Defendant Londeau sent to Mr. Grix that contained the executed Second Note and guaranties.

With regards to Ms. Maljak, she testified that Defendant Boike was protective of his stamp, but that he sometimes authorized others to use it. Ms. Maljak also testified that she attended a meeting that Mr. Grix also attended, but did not believe that it was the February meeting.

Finally, Mrs. Grix testified that at the February meeting Mr. Boike agreed to personally guaranty the Second Note.

Based on the evidence presented at the evidentiary hearing, the Court is convinced that Defendant Boike agreed to personally guaranty the terms of the Second Note, and authorized Defendant Londeau to use the signature stamp to sign Defendant Boike's name. Defendants Boike and Londeau, as well as Mr. Grix, testified that Defendant Boike had routinely allowed others to use the signature stamp on various documents. Moreover, it is undisputed that Defendant Boike was present at the February meeting, that he received a copy of the Second Note and guaranties, and that he did not object to the terms of the documents until after Property Solutions defaulted on its obligations under the Second Note. While Defendant Boike testified that he does not remember agreeing to the guaranty or authorizing Defendant Londeau to execute the guaranty on his behalf, the Court is satisfied that Defendant Boike has failed to create a

genuine issue of material fact on the issue of whether Defendant's Londeau's actions were authorized. Moreover, the Court has previously held that the Second Note and guaranties are valid and binding, and that the terms of those documents were breached. Consequently, the Court is convinced that Plaintiff's motion for summary disposition of its breach of contract claims against Defendant Boike must be granted.

Conclusion

For the reasons discussed above, Plaintiff's motion for summary disposition of its breach of contract claims against Defendant Allen Boike is GRANTED. This Opinion and Order neither resolves the last claim nor closes the case. *See* MCR 2.602(A)(3).

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: February 3, 2015

JCF/sr

Cc: *via e-mail only*

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